App. F. IX-4

1930. (Law)

File No. 93-30

Serial Nos. 1-2

Previous References
Mus 213 of 1925.

Later References.
Law 121-36 1-2
" 9-36 (21+30)
" 171-36 (1-2)
" 171-36 (3-4)

(149)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two.

Part B for Nov 36

SUBJECT.

O. S. 21/31-32 on the file of the Sub-Judge Bhimavaram (Sri Anami Mutt vs. D. Nagaraja Rao)

To Mr. D. C. Kolar

WD 01965—GPB—15,000—7-7-34

No. P 2335 dt. 16.11.36

Informs that this is not a fit case for appeal & Requests that necessary action may be taken to satisfy the decree out of the funds at the credit of Sri Anami Mutt.

Dr. Abdul Aziz
6.xii.36

General and Revenue Secretariat — Law File No. 93 of 1930.

Serial No. 1

Suit for declaration that the exparte decree passed in O.S. 93 of 19-20 on the file of the Sub Ct Bangalore against the Adiani Mutt does not bind the present Swami or the Mutt properties

(1) Issue the draft letter to PPr Bgle

Up.

DMP
8/1

To

The PPr. Bangalore

No. P. 4075 dt 10th Jany 1931 requesting to prepare and send for approval a dft. plaint as advised in Fin! Secy's letter.

To

(2) Mysg. Br. for perusal & return. The linked file may be retained there for the present.

DMP
15/1

(3) Submitted in perusal

15/1/31. H. Secy

16.1.31

Law Secy

17.1.31

Sus A for a week.

19/1

Subject The draft plaint called for for appl has not yet been recd. A dft reminder for the same is put up

DMP 19/1

Pr letter Mur 213 of 25

Retained in the Mysore Sec A TSD 10/1 15/1/31.

Typed extract a part of.

TSD 15/1

NOTE—Contn. Sheet.

Thanks DMP 15/1

WD 02553—G P B—50,000—8-7-30

3958

File No.

General and Revenue Secretariat

Letter dated 2nd Oct 1931 from the PPr Bangalore forwarding that the draft plaint has been sent to the D.C. Kolar as per Rule 83.

According to Rule 83 the plaint prepared will have to be sent direct to Secrt to Govt for approval

Subd for perusal

ISD

Since he has to prepare the plaint in consultation with the D.C. Kolar, he has sent the plaint (draft) to him. The PPr has to submit it to this office as soon as he gets it back from the D.C. The same may be awaited vide (187/2/31)

DMP

6/2

Sec B to 15.2.31

ISD 9/2

DMP

Letter no 344/30-31 dated 9th Oct 1931 from the PPr. Bangalore forwarding a copy of the disp plaint prepared in Consultation with the DC Kolar

for Scrutiny

Please get Rule 213 of 25

ISD 10/2

DMP 10/2

Vide Secretariat file no 213 of 25

MER 13/2/3

Serial No.

9) The Public Prosecutor, Bangalore, has sent for scrutiny and approval a draft plaint in the case to be filed by the Avani Mutt for a declaration that certain promote debts incurred by the late Swami & the exparte decree obtained thereon do not bin the mutt properties -

10) This is an important & difficult case involving rather complicated questions of law - His reference is invited to the opinion already recorded in paras 71 to 74 in the linked file as also to para 75 wherein the Govt Advocate has also expressed his opinion in the matter - It is in pursuance of this that the suit is now proposed to be filed -

Mur 213 of 1928

11) It would be an advantage, under the circumstances, if the draft plaint is perused by the Govt Advocate & his valuable suggestions, if any, obtained now If approved the file will be sent u.o. dy to the G-A for the purpose.

Legal R[r]

Dy 14/2

L.O. No. P 58 of 30 & P 19.2.1931

12) Forwarded with Compliments to the Government Advocate for favour of scrutiny and early return -

Mahadevappa
Legal R[r] & Secy to Govt Law Deptt

GOVT. ADVOCATE'S OFFICE. BANGALORE. 10 FEB 1931

Fmg 651/30-31 dy 19.2.1931

WD 02553—50,000—GPB—8-7 30

3558
3892

File No. of 193 General and Revenue Secretariat

Re-transmitted with compliments.

U. O. No. 54/30-31
dy 2.3.31

The draft plaint has been scrutinized. - A few necessary alterations have been embodied in the revised typed draft enclosed. It is - not clear why the Swami is suing through the - Deputy Commissioner. If the Swami is a minor, the Deputy Commissioner can institute the suit as his next friend. This fact should be verified and expressly stated in the title of the plaint and in para 2 as well. On the assumption that the present Swami is a minor, the necessary alterations have been tentatively incorporated in the typed draft. The name of the Swam should be specified in the title of the Plaint.

Bangalore,
2-3-1931.

M. Ramachandra Rao
Government Advocate.

H.

Mur: Branch for ascertaining whether the present Swamii of Avani Mutt is a minor. If he is not, information may be furnished as to how the Govt is managing the properties.

Mur Branch
with compts

Dy
7/3

Worgs.
4/3/31

The Swami is past 18. Please verify if the mutt properties have been under Govt management since 1920 or later earlier and under what provn of law.

MSK
4/3/31

GENL. & REV. SECT. 4 - MAR. 1931 1192 MUZRAI.

Mur 43-5-12-6
Mur 562-20-15

General and Revenue Secretariat | File No. | of 193

Kept back

A

Serial No.

16 Mug. Correction 435*-12-16 is traced & forwarded. Vide letter No 4*353 of 22-6-20 addressed to the D.C Kolar - Inam lands of the Sri Avani Mutt has have been alienated by the Swamis have been ordered to be resumed. The actual date of assumption of management of the Mutt is not traceable from the files. It is informally ascertained that Govt took over the Mutt after the demise of the late Swamy by D.O. calling for Connected informations is filed for appl.

S mdk 17/3

18 Issue

17.3.3

D.O. No 2056 of 17-3-31 to the D.C. requesting him to furnish the information therein called.

19 This may now returned to Law Secy. to avoid delay in the appl. the further info. furnished by the Karnataka Govt. be sent to them as soon as received.

S MSR 18/3

Yes

18.3.31

Law Secretariat

MSR 18/3/31

20 Even if Govt is managing this Mutt under Sec 25 of the Mut Regn of 1913, there appears

NOTE—Contn. Sheet.

3958

File No. of 193 General and Revenue Secretariat

to be no harm in making the present Swami himself as a complainant with the D.C. Kolar as surrarai officer if appd. The plaint as revised by the Govt Advocate will be sent to the Pr with instructions to take further action immediately -

Legal R^v

MM
18/3

21 Mar 1
P. 18/3

22/ Dft; please
MM
19/3

Vs Dft Subd -

Issue as revised. A copy of the plaint is to be retained here for refe -

MM
19-3

To

The Pr. Bangalore

No. P. 6057 dated 25th March 1931

forwarding a copy of the plaint as revised by the Govt Advocate, and requesting to be informed of the action taken in the matter immediately

3958

App. F. III—2]

General and Revenue Secretariat | File No. | of 193 .

Serial No.

D.O. no 1226/M-25 dated 19th March 1931 from the Mysore Comm^r stating that the Swamiyaru is still under training and may not be competent to manage the property and suggesting the desirability of retaining the management of the Matha for some time longer.

25) It is stated that the Swamiyaru may now be a little over 21 years of age. As he is still under training and being incompetent to manage the property, and as there are several suits still pending against the Mutt, it is suggested in para 4 of the P.W.D to retain the management of the Mutha in the hands of the Govt itself.

ISD 27/3 26) This is not a matter to be dealt with in the Law Dept. The letter is returned to the Mar Branch for further action, if any

Mar Br) 27/3/31

27) The D.O. is in reply to one inquiry for info. about the Swamiship of the Sri Swami Mutt and the circumstances in which the properties were taken under Govt management (vide para 14 of 8). This may be referred to the Law Secy after perusal

Secy 28/3/31 28) In connection with the regular suit ordered

NOTE—Contn. Sheet.

WL 62563—G P P—50,000—8 7 30

3935/P/31
1262

File No. of 193 General and Revenue Secretariat

to be filed in MUR-7-213-25. Under file the Law Secty wanted informa- tion as to why the properties of the Avani Mutt continue under Govt. management though the Swamiji is not a minor. The reply of Mr. Y. Narasimha Rao addressed to me is put up for kind perusal. Necessary action has been taken in the Law Secty.

H. Lacy) VS 28.3.31

h 30/3/31.

VS

Law Secy)

8.8 Addl 30/3

29) The file of papers (Happ) received with the draft plaint has to be returned to the Ppr. More. An enquiry maybe made in this connection what steps have been taken in pursuance of our letter of 25th ultimo.

MR 31/3

30) Dft put up accordingly

150 1/4

Issue MR 1/4

Dated No. P. 6381. dt. 2.4.31.

Sir H ... reply from the Ppr. 150 31/3

Do we write up to the 5th April MR 1/3

4773 9

App. F. III—2]

General and Revenue Secretariat | File No. | of 193

Serial No.	
	Letter no 442/30-31 dated 4.4.31 from the Pfr. B'lore explaining the steps taken in the Proposed Suit against Mr. V. Balaji Rao by Avani Mutt.
	31) Pfr. States that the plaint and the vakalat were sent to the Avani Mutt Swami for his Signature, and that the proposed suit will be filed on receipt of the plaint & vakalat from the Swami. It seems that the D.C. Kolar has instructed the Amldar, Mulbagal to send the money to the Pfr. Direct.
	for perusal
	ISD 10/4 Legal R^ BMP 11/4
	D.M. 11/4
	32) Sus to await further report BMP 15/4
Sus B.	
	Letter no 522/30-31 dated 13.6.31 stating that the suit has been filed in the Sub-court and has been numbered as O.S. 118/30-31.
	33) the Case is posed to 13.7.31 for Summons to the deft:
	ISD 17/6 Subd for perusal.
	Legal R^ BMP 17.6
	Chief Secy) BMP 20/6
	MM 23/6.
	Sub B BMP 23/6 Dft. calling for a report BMP

Note—Contn. Sheet

24 JUNE 1931

WD 02328—GPB—10,000—22-4-30

5788

File No .of 192 General and Revenue Secretariat

Serial No.

Dft is put up for appl.

ISD 31/7

Jgme
31/7

Signed no. 8-6 dt 3.8.31

Sur A.
ISD 4/8
4/8

As from the quarterly statement, it is found that O.S. 11F of 30-31 seems to have been withdrawn and O.S. 21 of 31-32 filed again in the Sub Court, Bangalore, since it appears that by mistake O.S. 11F of 30-31 was filed against Balaji Rao who was dead. In O.S. 21 Nagarajarao & others, legal representatives of Balaji Rao have been made parties. O.S. 21 of 31-32 was posted to 21-9-31 & the PPr may be asked to send a report as to the progress made in the case on the said date etc

7.10.31

who with a draft accordingly.

Jgme
8/10

TYPING SECTION
8. OCT. 1931
GENL. & REVENUE SECTT.

Note—Contn. Sheet

1687 Jus 235/P/31

App. F. III—2]

General and Revenue Secretariat | File No. | of 193

Serial No.

3/11/31

Letter no 161/31-32 dated 10-10-31 from the Pbr. B'lore informing that in O.S. 21 /31-32, the defendants have filed their statement on 5-10-31 and the case is posted to 3-11-31 for reply.

To) Dft calling for a copy of the W.S. is put up for orders

TSD 14/10

Issue

MY 14/10

Issued no. P. 2119 dated 16-10-31.

Letter no 1111/31-32 dated 22nd Oct 1931 from the Pbr. B'lore forwarding a copy of the W.S. filed by the defts and enclosing a copy of the reply to be filed for orders

Subs for perusal & sending.

TSD 26/10.

Today.

Issue the DO letter pointing

MY 26/10

To

The Pbr. B'lore

D.O. no. P. 2354 dt 26.10.31 Calling for the note re: the maintainability of the suit.

D.O. 254/31-32 dt 28th Oct 1931 enclosing a copy of the note on the Swami Mutt case.

37) In the circumstances explained in the note, Pbr states that he is not certain about the maintainability of the suit. Case is posted to 3-11-31 for filing reply

for Perusal

TSD 28/10.

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

DING SECTION 17 OCT 1931 NL. & REV SECTT.

28 OCT 1931 L. & REV. SECTT.

12

File No. of 193 General and Revenue Secretariat

Letter no 156 dated 4th Nov 1931 from the PPr B'lore informing that the case is posted to 18.11.31

Subject for sending of reply to the U.S.

TSD 9/11

(3a) The reply Statement (~~Flag~~ R) sent by the PPr, Bangalore is, I think all right and may be ~~to be~~ approved. In his note sent with the letter of 28th Oct, PPr doubts as to the maintainability of the Suit filed on behalf of the Swami Mutt & wants further instructions in the matter.

(3b) The note put up on 6.12.30 in Misc file 213 of 1925 placed below, shows that all the facts now mentioned by the PPr were placed before Govt Para 9 of my note anticipated difficulty on the question of limitation and res judicata to arise in the case and the filing of the Suit was recommended only as a last resort to see if the Mutt properties could be saved

(3c) I had a discussion with the Public Prosecutor also in the matter. It was found that the Suit was not a Suit to set aside an exparte decree but a Suit for declaration that the decree is not binding on the present Swami

Serial No.

or the properties of the Matha in his hands. The decisions which have held against the maintainability of Suits to set aside ex parte decrees which bind as against the defendant & his representatives become resjudicata do not strictly apply in the case of decrees against Mathadhipatis. One Mathadhipati does not derive his title under his predecessor and a decision against the one becomes binding on the other, not so much by virtue of sec 11 of the Code of Civil Procedure but on account of the principle laid down in Prosonna Kumari Debi v Golab chand (2 I.A 145) - Their Lordships of the Privy Council, in that case, after observing that a shebait may incur debts, or borrow money for necessary purposes, said:-

"It appears to be right and reasonable that judgment so obtained against a former shebait in respect of debts so incurred should be binding upon succeeding shebaits, who, in fact form a continuing representation of the idol's property .... Before however applying the principle of resjudicata to judgments of this character, the Courts should take care to be satisfied that decrees relied on are untainted by fraud or collusion, and that the necessary and proper issues were raised, tried and decided in the Suits which led to them."

It is this principle that has been again cited with approval and followed in the

(except on grounds of fraud or collusion)

NOTE—Contn. Sheet.

recent case of Moldari Sahu v. Chaturbhuj Das (1926 A.I.R.P.C. 112). In all text books the principle is stated that it is only decrees fairly obtained by or against the Mathadhipati as representative of the Mutt that bind both his successor and the mutt properties. (Gour page 1215)

In this case the decree was an exparte decree obtained against the late Swami whose profligate habits are now well known and so many of whose alienations are subjects of disputes now. The summons was served on the Mutt & it was held to be sufficient without even an attempt being made for fresh service. The debts were due not on any mortgage or bond but on promises executed by the Swami. No decree charging the properties could be passed in a suit on such promises, yet such a decree was passed almost mechanically. All these circumstances may show that it was not a decree fairly obtained after the necessary issues being considered & decided, and that consequently it will not bind the present Swami on the principle laid down in 2. I. A. 145.

As regards the question of limitation, the suit is filed on 17. 8. 1931, within 6 years

General and Revenue Secretariat | File No. | of 193 .

Serial No.

the D.C. as representing the Successor came to know of the decree, which was on 19th Oct 1925.

(3) It was mainly on these two grounds that a fresh Suit ~~was~~ was suggested and the then Govt Advocate also was of the same opinion.

(4) The Public Prosecutor having again raised these points and the points themselves being not at all free from doubt or difficulty, the present Govt Advocate may also be consulted as to the best line of action to be now adopted in the interests of the Deity.

Yes

Yes

7.11.31

GENERAL SECRETARY. 7 NOV. 1931 No. 3192

Dated 7/11/31

18/11/31

G.O.No.P 479 31 dated 11th October 1931

(5) Forwarded with compliments to the Govt Advocate for advice

B.O.

Narasaraja

Jaffna

11/11/31

GOVT. ADVOCATE'S OFFICE 11 NOV 1931 JAFFNA

Dated 12-11-31

Received 13-11-1931

(6) Returned with Compts.

There are many difficulties in the case. But as the matter is already before Court, the only Course now open is to put all the available facts before it and take its decision.

GENERAL SECRETARY. 23 NOV. 1931 No. Cont. Sheet.

Dated 23/11/31

16

246 1729

File No. of 193 General and Revenue. Secretariat

The P. Pr may be requested to meet me so that we may discuss and settle the line of action to be adopted in the best interests of the Govt.

~~Addl Secy to the~~
D.G. A
19.11.31

1) Dft to PPr, B'lore, returning all the enclosures received with his letter of 22nd ult & 4th inst

DNP
25/11

GENERAL SECRETARIAT
24 NOV 1931
No. 3 (a)

Letr No. 338/31.32 dated 19th Nov 1931 from the PPr. B'lore requesting to return the reps Statement before 1st Dec. 31

2) Dft Sub. with ref. to para 46+47 Supra.

ISD
24/11

Genl Secy)

DNP
24/11

[illegible]
24/11

DNP
24/11

TYPING SECTION
24 NOV. 1931
L. & REV. SECTT

The PPr. B'lore
No. 8. 2965 dated 25.11.31 returning the enclosures and requesting to meet the Govt. Ad [illegible] necessary records so as to discuss the line of action to be adopted in the Case

Sub A.

ISD
24/11

DNP 26/11

293 / 17

General and Revenue Secretariat | File No. | of 193 .

Serial No.

From,

The PPr. Bangalore

No. 461/31-32 dated 5.1.32 forwarding
Copies of W.St. and reply in OS. 21/31-32 on the file
the ~~Addl~~ Sub judge B'lore. (Arabi Pasha vs D. nagaraja Rao)

flag 'C' W.St. the reply are Sub[d] for perusal.

TSD
7/1

The case is for today for hearing.
await further report.

Sub D
PP
7.1.32

Posted to 13.1.32 for filing dft issues.
" " 16.2.32 for arguments.

From,

The PPr. B'lore.

No. 565/31-32 dated 11.2.32 forwarding certified
Copy of the issues framed in the case.
Sub[d] for perusal of the issues

TSD
15/2

PP
16/2

Sub D
Posted to 23.2.32
3.3.32
29.3.32
26.5.32
29.6.32
11.8.32
25.8.32
19.5.32

NOTE—Contn. Sheet.

18

O.S. 21/31-32 — Sub-ct. B'lore

(Avaramutt vs D. Nanjappa)

File No. of 193 . . General and Revenue Secretariat

From,

The PPr Bangalore

No. 532/32-33 dated 12.1.33 forwarding copy of the application filed by the defts in the above case for examining their witness who are at Kuthugiri on Commission and requesting instructions in the matter of filing objections.

2) This is a Suit filed by the D.C. Kolar as a next friend to the Swami of Avani Mutt who is a minor, for setting aside the ex parte decree passed in OS. 92/19-20 on the file of the Sub-ct B'lore, and for permanent injunction restraining the defts from executing the said decree against the pty and the Mutt properties.

3) Copy of the objection Statement to the application filed by the defts. said to have been enclosed is not received. The same may be called for, for reference and return.

Dft Subs for appl.

ISD 18/1

20/1/33

Issued no. P. 4032 dated 20.1.33

O.S. 1064/31-32 — Sub-ch. B'lore

(Aravinmutt vs D. Rangayya Rao)

9

[App. F. III—2

General and Revenue Secretariat	File No.	of 193

Serial No.

From

The AR. B'lore

No. 617/32-33 dated 28.1.33 stating that objec were filed in the above case according to the instructions of D.C. Kolar, and that the Court has passed order allowing the appl and directing the defendants to deposit Commissioner's fee of Rs 50/- and that further instructions are solicited from the DC or to the arrangements that will have to be made at Krishnagiri.

Submitted for perusal with reference to paras 50-51 Supra. Further report may be awaited

180 31/1

ws B 7/2/33

NOTE—Contn. Sheet.

1465 P 34 20

No. 280 — 34-35 —

Enc. .....

GENERAL SECRETARIAT
9 SEP. 1934

OFFICE OF THE PUBLIC PROSECUTOR,
BANGALORE DIVISION,

DISTRICT OFFICE BUILDINGS,

Bangalore,.....7th.....September.....193 4.

Law 93-30—

FROM

G.S. Doraswamy Iyer, Esq.,B.A.,B.L.,

Public Prosecutor,
Bangalore Division, Bangalore.

To

The General Secretary to the Government of H.H.
the Maharaja of Mysore, Bangalore.

SIR,

RE: O.S.No.21/31-32 on the file of the Subordinate Judge, Bangalore. (The Deputy Commissioner Kolar and Swami of Avani mutt -VS- D. Nagaraja Rao and others.)

I have the honour to state that orders were passed in the above case on 5th September 1934 dismissing the suit with costs. A copy of judgment and decree has been applied for and will be sent to you as soon as it is ready. After the copy of the judgment is received I will forward my opinion as to the desirability of preferring an appeal.

I have the honour to be,
Sir,
Your most obedient servant,

S Doraswamy Iyer
Public Prosecutor.

KHR.

53) This is a suit for declaration that certain promote debts incurred by the late Swami of Avani Mutt and the ex parte decree obtained against him on the file of the Subordinate Judge, Bangalore in OS 93/1930, do not bind the present Swami or the Mutt properties.

Copy of the judgt may perhaps be required.

Subn. for perusal.

TSD 10/9

11/9

Sir

11/9

O.S. 21/31-32 — Subh. Ch. Bose

(Avani Mutt vs D. Rajaraja Rao)

1908
21

General and Revenue Secretariat | Law File No. | of 1934 | [App. F. III—2

Serial No.

From,

The Pvt. Bose

No. 374/Press dt 27.9.34 forwarding a Copy of the Judgment and Decree in the above case and stating that all the findings except on the 2nd issue are in our favour

5a) Law Sec. may perhaps be Consulted whether this is a fit Case for appeal

Subh. for orders vide reflx to para 53 Supra.

ISP 1/10

5b) Copy of the Judgt is Subh. for perusal, after which the G.A. will be consulted regarding the appeal.

General Secy) JPP 1/10

Second Member. Case 1-10-34

JPP 2/10

JPP 3/10

Case 3-10-34

JPP 3/10

OFFICE OF THE SECOND MEMBER OF COUNCIL 2 OCT. 1934 No. 2514

NOTE—Contn. Sheet.

WD 0195—GPB—22,500—12-6-34

O.S. 11/1932 — Subordinate Office

1908
1465

22

Law File No. of 1936, General and Revenue Secretariat.

57) Forwarded with Compliments to the Govt. Advocate for favour of advice

B.O.

Mysore
for General Secy
15D 4/10.

A.O.No. P 629/34 dtd 4.10.1934

Doo BS8/34-35. dt 4.10.34

Returned with compliments.

58) The depositions of the witnesses in the case and copies of Exhibits are not sent with the file and I did not, therefore, have the advantage of perusing them.

A.O. No. 149 dt 19.10.34

59) So far as the Judgment goes, the findings of the learned Subordinate Judge are mostly in favour of the Plaintiff, that is the Swami of the Mutt. The learned Subordinate Judge has found in favour of the Plaintiff on all the points of law raised by the Defendant. The suit has however, been dismissed on the ground that the debts incurred by the Swami on the pro-notes on which a decree was obtained in the previous case was for legal necessity and for the benefit of the Mutt, and that - therefore, the decree was valid and binding on the Mutt properties. The plea of the Defendants was that the amounts were borrowed for buying an elephant and for meeting sundry expenses while the Swami was at Krishnagiri in 1917. The defendant's witnesses as can be gathered from para. 18 of the Judgment seem to support the case for the defendant that the amount was borrowed for buying an elephant and that an elephant was bought and was taken in procession.

60) The question, therefore, is whether the late Swami was justified in borrowing money for the sake of purchasing an elephant which is a costly paraphernalia

Serial No.

and whether that debt would, therefore, be binding on the Mutt and its properties. The plaintiff examined one witness, viz., Mahamahopadhyaya Sivasankara Sastri who has deposed that an elephant was not a necessary paraphernalia of the Mutt in the olden days and there seems to be no rebutting the evidence on the side of the defendant. The learned Subordinate Judge observes that the Mutt is an important Mutt of the State and had to keep certain retinue of men and animals in order to maintain its status and that he is therefore, 'not inclined to think that an elephant is not a necessity'. It has been laid down in a number of decisions that the Swami of a Mutt could alienate or charge the properties of the Mutt only for unavoidable necesssity and the learned Subordinate Judge does not also expressly say that this was an unavoidable necessity.

(61) I therefore, think that this is a fairly arguable case and an appeal may be filed.

M. Veeraswami
Government Advocate.

H.

(62) If the maintenance of a certain retinue of men and animals for the sake of the prestige ~~and~~ is a necessity and that should be presumed if there has been an elephant amongst the paraphernalia of the Mutt at any time I doubt if the appeal could be successfully argued. It is not clear whether the

NOTE—Contn. Sheet.

P 1905.

24

File No. of 193 .

General and Revenue Secretariat

elephant is an innovation and introduced by the late Swamy for the first time in the history of the Mutt.

Sd/- Investigator.

OFFICE OF THE MUZRAI COMMISSIONER No. 31. OCT. 1934 IN MYSORE BANGALORE.

Law 20.10.34

OFFICE OF THE SECOND MEMBER OF COUNCIL. 21 OCT. 1934 No. 2975

b) Please consult the Mal also

J.P.R. 29/10

C.S.O. No. P 74 J 34 dated 30th October 1934

b) The Muzrai Commissioner with enquiries.

Law 29.10.34

MP 29/10/34

OFFICE OF THE MUZRAI COMMISSIONER No. C.S.S.5.f.2 31. OCT. 1934 IN MYSORE BANGALORE.

855 25-26 3-11-35

Early

MP 31/10/34

b) The elephant is not an innovation in this Mutt, as maintenance of an otherwise it would not have found mention in the Rahadaris issued to this Mutt in 1894. Although the Swami need not, in the then financial circumstances of the Mutt, have incurred a debt to purchase an elephant, it will not be easy to prove that the Subordinate Judge was wrong in holding that it was a legal necessity. We cannot therefore be sure of success in appeal.

Returned with compliments.

Law MP 31/10/34

31.10.1934

M. Madhava Rao

Muzrai Commissioner.

dkg.

Law MP 5/11/34

O.S. 31xx – Sub. Ch. B'lore
(Sri Avani Mutt vs D. nagaraja Rao)

2455
25

General and Revenue Secretariat | Law File No. of 193 4. | [App. F. III—2

Serial No.

From

The D.C. Kolar

no. Ad. e. 850/3031 d 31.10.34 forwarding a copy of the PPr's letr d 25.10.34 opining that it is a fit case for appeal and requesting to authorise the Govt. to file an appeal if he agrees with the PPr.

6b) Both the Govt. and the PPr. B'lore are of opinion that this is a fit case for appeal. Mag. Comr in his w.o. note in para 6a supra however states that he cannot be sure of success in the appeal.

Submitted for orders

ISD 7/11

6c) I do not think this is a fit case in which Govt can take ~~possible steps~~ action to file an appeal. The chances of success are remote and what the GA & the PPr say is merely that there are arguable points.

Gen Secy) BVP 7.11.34

Second Number

OFFICE OF THE SECRETARIAT OF COUNCIL
9 NOV. 1934
No. 33-20

Govt. 7.11.34.

6d) I agree BVP 7/11

S/52 9/11

6e) Addl BVP 9/11

Govt. 9.11.34

NOTE—Contn. Sheet.

WD 01955—GPB—22,500—12-6-34

26

O.S. 21/31-32 - Sub-Ct B'lore

Avani Mutt Case.

2555
2737.

Law File No. ? of 1936.

General and Revenue Secretariat

From,

The DC Kolar

No. A.2-C. 850/30-31 d 7th nov 1934

forwarding a copy of the letter addressed to the Pbr. B'lore in the matter of execution proceedings in the above case, and soliciting early orders of Govt in re: the filing of an appeal.

Submitted with a draft with reference to para 67-69 Supp. The DC may be instructed to satisfy the decree from the funds at the Credit of Sri Avani Mutt

ISD 10/11

For perusal before issue

Geesey) MRP 10/11

Case 12.11.34

Joshua MSR 15/11/34.

To,

The DC Kolar

No. P. 2555 d 16.11.34 informing that this is not a fit case for appl and that necessary action may be taken to satisfy the decree out of the funds at the Credit of Sri Avani Mutt

To,

Mang. Br. (Exe.) for perusal & return

ISD 19/11 MSR

TYPING SECTION 15. NOV. 1934 GENL. & REV. SECTT.

From,

The DC Kolar

No. A2-C. 850/30-31

d 15.11.34 requesting for early orders

GENL. & REV. SECRETARIAT 56-5- 19. NOV. 1934 M-2 BRANCH

565 — 273/2555 27

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

SNW for personal
Sec
19/11/34
Ch: Secy)

88
20/11/34

GHQ SECRETARIAT
27 NOV 34

RR
23/11/34
SD 23/11

Law section in the Camps
Sec
23/11/34
Law
DDM 23/11

B
24/11/34
30

NOTE—Contn. Sheet.

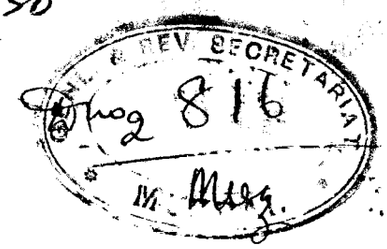
WD 01955—GPB—22,500—12-6-34

Bangalore
1-12-1930.

Pubd.

No 213/30-31
encl 23 pages.

2749 pf 30



From

The public prosecutor,
Bangalore.

Law 93-30-1

To

The Legal Remembrancer and
Secretary to Government,
Law Department,
Bangalore

28/1/12
Sir. Law 1/12

With reference to letter No. 1201 Mugs 213-25 dated 26th November 1930 from the Secretary to Government Financial Department, I have the honour to state that the papers called for are sent herewith

The suit was decreed on 26-9-1924. Long after the decree, somewhere in 1925, an application was filed to set aside the exparte decree. One of the allegations made therein is that the exparte decree was obtained by fraud That application was opposed and on 26.5.19 it was also dismissed. In the execution of the decree c.e. Ex 2544/24-25, an objection was filed and orders were passed on 27-9-19 The question is not free from difficulty - as it turns upon the question of legality or otherwise of the Decree in making the properties of the Mutt liable for personal debts of the late Swami - as detailed in my

To Mr. Menon 28/11
Nugrai Br. for favour of putting up Previous reg[d]s
TSD yrs 1924 1/12

Objection petition and an appeal in these
matters have been against the present order
[illegible]

Your most obedient Servant

B. M. Villa

public prosecutor

Bangalore

Appendix F G—1

SUBJECT.....

.....

.....

Section Law

File No. A 3-30

Serial No. 2

No. 4075 Gus

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193*

To

The Public Prosecutor

Bangalore.

Date of issue 10/1/31

Signed by.....

Sir,

With reference to your letter No: 213/30-31 dated 10th Decr 1930 regarding Execution 2524 of 24-25 on the file of the Sub court Bangalore (Nagaraj Rao v Avani Pant), I am to invite attention to the Financial Secretary's letter No: 1487/Mur 213-25 dated 8th Jan 1931 ~~of this date~~ to the Mur Govt copy of which is also forwd

List of enclosures.....

Copied by.....

Examined by.....

[over

WD 02559—GPB—25,000—25-6-30

17

Today,
to you with Our Memo No. 1488
and to request you to prepare
a draft plaint as advised
therein and Submit the same
to ~~this office~~ the Legal Rv
for approval.

The ~~words~~ papers sent
with your letter under reply
are herewith returned.

Thank
Yours
for L.R.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. 4075 Misc.

Dated, Bangalore, 10th January 1931

From

The Chief Secretary to the Government of His Highness the Maharaja of Mysore,
Law Department.

To

The Public Prosecutor,
Bangalore.

Sir,

With reference to your letter No. 213/30-31 dated 1st December 1930 regarding Execution 2544 of 24-25 on the file of the Sub Court Bangalore (Nagraj Rao Vs Avani Mutt), I am to -- invite attention to the Financial Secretary's letter No. 1487/Mu 213-25 dated 8th January 1931 to the Muzrai Commissioner copy of which has also been forwarded to you with Muz Memo No. 1488 of the same date and to request you to prepare a draft plaint as advised therein and submit the same to the Legal Remembrancer for approval.

The papers sent with your letter under reply are herewith returned.

I have the honor to be,
Sir,
Your most obedient servant,

For Chief Secretary to Government.

C.R.

No 389/29 D
P & J Bangalore
2-2-1931

From

The public prosecutor,
Bangalore

To

The Legal Remembrancer and Secretary
to Government, Law Department
Bangalore

Sir,

Re: Ex. 2544 of 24-25 on the file of the Sub-judge, Bangalore. Suit to be filed against D. Rajarajakka on behalf of Avani Mutt

With reference to your letter No. P. 4582 Law dated 31.1.1931, I have the honour to state that the draft plaint in the above case has been sent to the Deputy Commissioner, Kolar, as per Rules 83 of the Conduct of Legal Affairs of Government with this office No: 330/30-31, dated 28.1.31

I have the honour to be,
Sir,
Your most obedient Servant,

B. N. Narasimha Murthy
Public Prosecutor,
Bangalore

P. 6/2
Law 5/2

No 344 / 30-31
encl (1 file)

Bangalore
9-2-1931

3958

From

The public prosecutor,
Bangalore

To

The Legal Remembrancer
and Secretary to Government,
Law Department
Bangalore

Sir, Re: Suit to be filed against D. Nagaraja Rao.
by Avani Mutt.

I have the honour to send herewith the draft plaint prepared in consultation with the Deputy Commissioner, Kolar, for your approval and return. The connected records are sent herewith.

I have the honour to be,
Sir,
Your most obedient Servant

B. N. V. Rao
public prosecutor,
Bangalore

Appendix F G.—1

SUBJECT.....

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.....

Immediate

Section M43

File No.

Serial No.

No. 2056

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193* .

To

Asst to M.C.....

Date of issue 17.3.31

Signed by Mr V. S. Sastry

Dear Sir,

I am desired to request you to kindly state for information of the L.R. & Sec. by Govt Lawdept when & under what circumstances the Management of the Sri Avani Mutt properties was taken by Govt as well as the exact age of the present Swamiji of the Mutt. If the Mutt is under Govt Management under Sec[2] 25 of M.M. Reg[n]. of 1913, the reasons for its

List of enclosures.....

Copied by.....

Examined by.....

[over

WD 02559—GPB—25,000—25-6-30

Continuance under Govt Management
may also be kindly stated.
Do favour of an immediate reply.
~~It~~ is requested to facilitate
the approval of a plinth Subd
by the P. P. Bangalore Divn

Yours sincerely

VB

17.3.31

In the Court of the Sub Judge Bangalore.

O.S.No. of 1930-31

Plaintiff.	Defendant.
Swami of Avani Mutt, Mulbagal, Minor by next friend the Deputy Commissioner, Kolar.	N.Balaji Rao son of Nana Rao Brahmin aged about 45 years Mittadar Krishnagiri, Salem Dt.

Under Order VII Rule I C.P.C.

Plaintiff states as follows:-

1. The addresses of Plaintiff and Defendant are as stated above.

2. Plaintiff is the present Swami of the Avani Mutt, Mulbagal taluk, Kolar District and the Mutt properties are being managed by his next friend the Deputy Commissioner, Kolar District as Muzrai Officer, since the demise of the late Swami.

3. Plaintiff learns that the Defendent filed a suit O.S.No. 93/19-20 in this Court against the late Swami for the recovery of money alleged to be due under two promissory notes said to hav been passed by the late Swami for Rs. 400 - and Rs. 1,600 of 4th May 1917 and 13th May 1917 respectively, and obtained an ex-parte decree for the sum of Rs.3,256 plus costs and interest against the late Swami and also the properties of Avani Mutt.

4. Plaintiff learns that summons in the suit was not served personally on the late Swami, but was served on the Mutt during the absence of the late Swami while he was on tour and that the decree was wrongly obtained against the properties of the Mutt without the Court going into the question whether the properties were liable or not.

5. Plaintiff learns that the pro-notes were passed by the late Swami not for any legal necessity, not for the benefit of the Mutt but for the private purposes of the Swami at the ex-orbitant rate of interest of 36% per annum as stated in the pro-note for Rs. 1,600/-

6.Plaintiff submits that the late Swami while passing the pro-notes did not intend to make the properties of the Mutt liable for the debts and there was no pressing necessity to contract debts for the purpose of or for the real benefit of the Institution.

7. Plaintiff submits that even if there was consideration for the pronotes, the decree is neither valid nor binding upon the Successor of the late Swami and a cording to law, the properties of the Mutt in the hands of the successor are not liable for the debts of the late Swami, as the debts were not made a charge on the Mutt properties and were not for legal necessity or benefit of the Institution. After him, neither his successor nor the properties in his hands are liable for the debts contracted by him. As the decree was obtained against the late Swami in his personal capacity and not as Manager of the Mutt. the decree is also not binding on the Plaintiff and the Mutt properties in any way according to law.

8. Such being the nature of the debts and the non-liability of the Mutt property for such debts, the defendant has; in execution of the decree obtained in O.S. 93/19/20 attached the amount due to the Mutt in the hands of the Deputy Commissioner Kolar: Such attachment is not sustainable in law.

9. Execution Petition No. 2544 of 1924-25 was filed on 8-6-1925, praying for recovery of the amount by attachment and sale of properties of the Mutt. The Deputy Commissioner on behalf of the Mutt urged certain objections to the said attachment but they were disallowed on the ground that they could not be considered on the execution side. Hence the present suit.

10. The cause of action for this declaratory suit arose within the jurisdiction of this Hon'ble Court on 8-6-1925 and subsequently when an order for attachment was made and also on 24-10-1930.

11. The value of this suit for purposes of Court-Fee and jurisdiction is as follows:-

For declaration that the decree is notbinding on the Plaintiff according to section of Regulation, is Rs: and for Injunction valued at Rs. 10/-

Stamp is paid accordingly.

12. Plaintiff therefore prays for judgment and decree as follows:-

(1) For declaration that the ex-parte decree passed in O.S.92/19-20 on the file of this Hon'ble Court against the late Swami of Avani Mutt and the properties of the Mutt is not binding on his successor, the present Swami of the Avani Mutt and the Mutt property in his hands for the reasons stated above.

(2) The permanent injunction restraining the defendent from executing the said decree against the Plaintiff and the Mutt properties in the hands of the Plaintiff.

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and costs of this suit as well as any other relief which the Plaintiff may be found entitled to in the nature of the case.

I, the next friend of the above named Plaintiff do hereby declare that what is stated above is true to the best of my knowledge, belief and information.

C o p y

For Secy. to Govt.Law Deptt.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, ~~24th March~~ 25 1931.

No. No. P. 605

From

The Secretary to the Government of His Highness the Maharaja of Mysore,
Law Department.

To

The Public Prosecutor,
Bangalore.

Sir,

With reference to your letter No.344/30-31 dated 9th February 1931 forwarding for approval a draft plaint in the proposed suit against N.Balaji Rao by the Avani Mutt, I have the honor to forward herewith for further necessary action a copy of the plaint as revised by the Government Advocate. It is however to be pointed out that since the Swami is no longer aminor but the Mutt is under management of Government under Regulation VII of 1927, the plaintiffs ought to be 1) the Swami and 2) Government of Mysore by the Deputy Commissioner Kolar, as Muzrai Officer. Necessary modifications may be made and further action taken immediately and the matter reported to me without delay.

I have the honor to be,

Sir,

Your most obedient servant,

For Legal Remembrancer and
Secy. to Govt.Law Deptt.

ISD

No.12-26/24-5 Immovable

14

OFFICE OF THE Muzrai REVENUE COMMISSIONER
IN MYSORE,

GEN. & REV. SECRETARIAT
19 MAR 1931
1262
MUZRAI.

Dated, Bangalore, 19th March 1931.

Dear Sir,

Re management of the Sri Avani Matha.

In reply to your D.O.letter No.2056 dated 17th --- instant, I write to state that it appears from this office file on the subject the Muzrai Secretary requested the -- Kolar Deputy Commissioner in his letter No.435/Muz.435-12-16 dated 22nd June 1920 that steps be taken in accordance with the rules laid down in the late Chief Commissioner's Notification of 17th November 1877 for the resumption of such of the inam lands of the Matha as had been alienated by the late -- Swamigalu, the question of taking over all the properties of the Matha under Government management being deferred until the Government had satisfactory evidence of the net income from all the matha lands and of its sufficiency to meet the ----- legitimate Expenditure. Perhaps Secretariat Muzrai File --- 435-12 leading to the above letter may furnish more detailed information on the points raised in your letter.

2. On the demise of the Swamigalu at Mahabubabad on 11th

April

April 1925, the Government in their order No.1535-8/Muz. 264-24-6 dated 22nd April 1925 directed that the Matha buildings and its belongings be taken charge of under Sec. 25(2) of the Mysore Religious and Charitable Institutions Regulation. It is in pursuance of the above orders that the management is now vested in Government.

3. The exact age of the present Swamigalu is not known. At the time of his selection to the Peeta in 1927 the Swamigalu was 18 years of age and he must now be a little over 21 years. (vide Government Order No.530-33/ Muz.268-26-8 dated 29th September 1927.)

4. The Matha buildings and its belongings have been taken charge of by Government under Sec.25(2) of Reg.VII of 1927 and the management can only cease under any one of the provisos to that section. In the present instance no period seems to have been fixed at the end of which the present arrangement should terminate. The Swamigalu is still under training and may not be quite competent to manage the property. Several suits instituted by

creditors

16

creditors of the late Swamigalu and the alienees of the Matha villages are in various stages of pendency. It is also under contemplation to recover, by means of private negotiations or by filing Civil Suits, the -- several valuable properties alienated by the late --- Swamigalu. For these reasons, among others, it will be a matter ~~of~~ for consideration if it will not be in the best ~~i~~interests of the Matha for the Government to -- retain the management for some time longer.

Yours sincerely,

Yuvarajaja Rau

To

V. Subrahmanya Sastry, Esq., B.A.,
Assistant Secretary to the Government of His Highnss the Maharaja of Mysore,
Financial Department.

Submitted to the Asst to the LR

19/3/31.

In the Court of the Sub-Judge, Bangalore.

O.S. No. of 30-31

Plaintiff

Swami of Avani Mutt, Mulbagal through the Deputy Commissioner, Kolar.

Defendant

N. Balajirao.
S/o Ranarao
Brahmin aged about 45 years, Nittadar, Krishnagiri Salem District.

Under order VII rule 1 C.P.C.

Plaintiff states as follows...

1. The address of plaintiff and defendant are as stated above.

2. Plaintiff is the present Swami of the Avani Mutt, Mulbagal Taluq, Kolar District and the Mutt properties are being managed by the Deputy Commissioner, Kolar District as Muzrai Officer since the demise of the late Swami

3. Plaintiff learns that the Defendant filed a suit O.S. 93/19-20 in this Court against the late Swami for the recovery of money alleged to be due under two promissory Notes said to have been passed by the late Swami for Rs 400 and Rs 1600 of 4th May 1917 and 13th May 1917 respectively and obtained

obtained an ex-parte Decree for the sum of Rs 32 58 plus costs and interest against the late Swami and also the properties of Avani Mutt.

4. plaintiff learns that Summons in the suit was not served personally on the late Swami but was served on the mutt during the absence of the late Swami while he was on tour and that the decree was wrongly obtained against the properties of the Mutt without the court going into the question whether the properties were liable or not.

5. plaintiff learns that the promote were passed by the late Swami not for any legal necessity nor for the benefit of the mutt but for the private ends of the Swami at the exhorbitant rate of interest namely ~~3% per month or 36%~~ per annum as stated in the promote for Rs 1600/-

6. plaintiff submits that the late Swami while passing the promote did not apparently intend to make the properties of the mutt liable for the debts and there was no pressing necessity to contract debts

for the purpose of or for the real benefit of the Institution.

7. Plaintiff submits that even if there is was consideration for the pronote, the decree is not valid and is not binding upon the successor of the late Swami and according to Law the properties of the mutt in the hands of the successor are not liable for the debts of the late Swami, as the debts were not made a charge on the mutt properties and were not for legal necessity and benefit of the Institution. The decree ~~debt~~ could only be executed against the late Swami or the properties of the mutt in his hands during his life time provided they were for legal necessity and for the benefit of the Institution. After him neither his successor nor the properties in his hands are liable for the debts contracted by the late Swami. As the decree was obtained against the late Swami in his personal capacity and not as manager of the mutt, the decree is also not binding on ~~defendants~~ plaintiff and the mutt properties in any way according to law.

neither valid nor binding

8. Suit being the circumstances of the nature of the debts and of the non-liability

of the Mutt property for such debt, the defendant has in execution of the decree obtained in OS 93/19-20 attached the amount due to the Mutt in the hands of the plaintiff. Such attachment is not sustainable in law

9. The Execution petition No 2544 of 24-25- was filed on 8-6-1925 praying for recovery of amount by attachment and sale of properties of the Mutt. Attachment of moneys in the hands of the plaintiff was obtained subsequent to 8-6-1925 and though objections were put in, in that case on behalf of the said plaintiffs, This Honourable Court wrongly disallowed the plaintiffs objections and ordered the deposit of the attached money in court on 24/10/1930 for payment to the defendant. This order is not Conclusive according to law. Hence this Suit for declaration and injunction as prayed for below.

10. The cause of action for this declaration Suit arose within the jurisdiction of this Honourable court, on 8-6-1925 and subsequently when an order for attachment was made and also on 24/10/1930

11. The value of this suit for the purpose of court fee and jurisdiction is as follows:- For declaration that the decree is not binding on the plaintiff according to S. of Regulation is Rs. and for injunction valued @ Rs 10.

Stamp is paid accordingly.

12. The plaintiff therefore prays for judgment and decree as follows:-

(1) For declaration that the exparte decree passed in OS 92/19-20 on the file of this Honourable court against the late Swami of Avani Mutt and the properties of the Mutt during his lifetime is not binding on his Successor/present Swami of the Avani Mutt and the Mutt property in his hands for the reasons stated above ~~in this plaint and for setting aside the order in the execution of the said decree~~.

~~Value for this relief is Rs 150/-~~

(2) For permanent injunction restraining the defendant from executing the said decree against the plaintiff and the Mutt

properties in the hands of the plaintiff.

~~Stamp paid for this ... Rs. 1000~~

and costs of this suit as well as any other relief which the plaintiff may be found entitled to in the nature of the case.

B. N. Vidya.

I the above named plaintiff hereby declare that what is stated above is true to the best of my knowledge, belief and information.

Appendix F G—1

SUBJECT.....

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Diary No. of letter replied to..... .....

General and Revenue Secretariat

( )

the *193*

Date of issue 2/4/31

Signed by..... M'888

List of enclosures.....

Copied by.....

Examined by.....

Section

File No.

Serial No.

No. P 6387 Emls

To

The P.P.r. Bangalore

Sir,

In Continuation of this office letter no. P. 6057 dated 25th March 1931 re: the proposed Suit against V. Balaji Rao by Avani Mutt, I am directed to return herewith the file of papers received with the dft plaint and to enquire what steps have been taken in the matter.

I have etc

for L.R.

over

ISD 5/4

WD 02327—GPB—5,000—15/4-30

4773/30 Bangalore 2.
P 6381
6-4-31

442/30-31

From

The Public Prosecutor,
Bangalore

To

The Legal Remembrancer
and Secretary to Government,
Law Department,
Bangalore

Sir.

Subject: Suit to be filed against Mr. N. BalajiRao by Avani Mutt.

With reference to your letter No. P 6381/Law of the 2nd instant I have the honour to state that the plaint and vakalat were sent to the Deputy Commissioner, Kolar, for his signature and they were received yesterday. I have sent the same to the Avani Mutt Swami for his signature. The suit will be filed in Court after the receipt of the plaint and vakalat from Swami and money from the Amildar Mulbagal Taluk who has been instructed by the Deputy Commissioner, Kolar, to send the money to me direct.

I have the honour to be,
Sir,
Your most obedient Servant.
B.N. Rao
Public Prosecutor

5786 of 30 Bangalore
12-6-
13/6

No 522/30-31

From

The Public prosecutor,
Bangalore

To

The Legal Remembrancer
and Secretary to Government,
Law Department,
Bangalore

Sir, O.S. no 118/30-31 on the file of the Sub-Judge, Bangalore Swami of Avani Mutt and Deputy Commissioner, Kolar vs. N. Balajirao

P.M. 13/6/31

In continuation of this office no. 442/30-31 dated 4-4-1931 I have the honour to inform you that the above suit was filed in Sub-Judge's Court and it has been numbered as O.S. 118/30-31 and it is posted to 13-7-1931 for summons to defendant.

I have the honour to be,
Sir,
Your most obedient Servant
B. N. V. Dela.
Public prosecutor,
Bangalore

Appendix F G–1]

SUBJECT.....

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Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193* .

Date of issue 7/8/31

Signed by

List of enclosures.....

Copied by.....

Examined by.....

Section

File No.

Serial No.

No. 7694

To The PPr. Bangalore.

Sir,

Adverting to your letter no 522/30-31 dated 12.6.31 re: O.S. 118/30-31 on the file of the Subjudge Bangalore (Swami of Avani Mutt & D.C. Kolar vs Balaji Rg) I am directed to enquire as to what happened to the case on 13.7.31 the date to which it was posted for summons to defts & the further date to which it stands posted -

I have etc

TSD 31/7

DRL 31/7 for Ch. Sec.

24

1st August 1931.

The Chief

The Public Prosecutor,
Bangalore.

Adverting to your letter No.522/30-31 dated 12th June 1931 regarding O.S.118/30-31 on the file of the Sub-Judge, Bangalore (Swami of Avani Mutt, and Deputy Commissioner, Kolar VS Balaji Rao), I am directed to enquire as to what happened to the case on 13th July 1931 the date to which it was posted for summons to - defendant and the further date to which it stands posted.

I have the honor to be,
Sir,
Your most obedient servant,

Chief Secretary to Government.

S.R.-2

Misc 235 of 1930

GPB

192 .

From

B. N. VIJAYA, DEVA, M. A.,
BARRISTER-AT-LAW,
PUBLIC PROSECUTOR & GOVT. PLEADER,
BANGALORE DVN.

To

The General Secretary to the Government of Mysore, Bangalore

Dated 10.10.31

Despatched 10.10.31

Received 10 OCT. 1931

GENERAL SECRETARY

General No. 161/31-32 No. 1015

No.

Enclosure No.

Sir,

Re: O. 21/31-32 on the file of the Sub-judge, Bangalore. Suit against Nagarajarao & others

I have the honour to inform you that the defendants have filed their statement in court on 5.10.31 and the case is posted to 3.11.31 for Reply.

Call for a copy of the W.S. filed. Draft reply is to be sent for approval 15/10

I have the honour to be,
Sir,
Your most obedient Servant,

B. N. V. Deva
Public Prosecutor,
Bangalore

29

Appendix F G—1]

SUBJECT .....

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Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193*

Date of issue 16/10/31

Signed by Mr Ray

List of enclosures .....

Copied by .....

Examined by 20/10/31

Section

File No.

Serial No.

No. 2219

To The PPr Bangalore

Sir,

With reference to your letr No 161/31-32 dated 10.10.31 ~~re~~: ~~on~~ intimating that O.S 21/31 on the file of the Sub-judge B'lore Suit against Nagaraja Rao & ors has been posted to 3.11.31 for reply I am directed to request that a Copy of written Statement filed by the defendants may be sent for information of Govt

A Draft of the reply Statement has to be sent for approval before it is filed on 3.11.31.

I have etc

for Secy

20/10

1687 & 3300

No. 244/31.m
Enc. two.

Office of the Public Prosecutor,
Bangalore Division.
Dated, Bangalore 22nd October 1931.

From

G. S. Doraswamy Iyer, Esq., B.A., B.L.,
Public Prosecutor,
Bangalore Division, BANGALORE.

GENERAL SECRETARY.
24 OCT 1931
No. 705

The Secretary to the Government
of H. H. The Maharaja of Mysore,
General Department, BANGALORE.

Sir,

With reference to your letter No.P.221/9/Law. dated the 16th October 1931, I have the honor to forward herewith, for the information of Government, a copy of the Written Statement filed by the Defendants in Original Suit No.21 of 1931-32 on the file of the Sub Judge, Bangalore, ~~Division~~ (Sri Vidyaranya Bharati Swami of Avani Mutt and The Deputy Commissioner & Muzrai Officer, Kolar VS. B. Nagaraja Rao and others).

I am also enclosing a ~~draft~~ reply to be filed in the above, for your approval and return.

I have the honor to be,

Sir,

Your most obedient servant,

G. Doraswamy Iyer

PUBLIC PROSECUTOR.

Encl 2.

Office of the Public Prosecutor,
Bangalore Division.
Dated, Bangalore 22nd October 1951.

From

G. S. Doraswamy Iyer, Esq., B.A., B.L.,
Public Prosecutor,
Bangalore Division, BANGALORE.

To

The Secretary to the Government
of H. H. The Maharaja of Mysore
General Department, BANGALORE.

Sir,

With reference to your letter No. P.SEL/Law. dated the 16th October 1951, I have the honor to forward herewith, for the information of Government, a copy of the written statement filed by the Defendants in Original Suit No.21 of 1951-52 on the file of the Sub Judge, Bangalore, Krishnam (Sri Vidyaranya Bharathi Swami of Avani Mutt and The Deputy Commissioner & District Officer, Kolar Dt. H. Hayavadana Rao and others)

I am also enclosing a draft reply to be filled in the above, for your approval and return.

I have the honor to be,

Sir,

Your most obedient servant,

PUBLIC PROSECUTOR.

Appendix F G—1

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193*

Date of issue 26-10-37

Signed by Mr Bhaji

List of enclosures.....

Copied by.....

Examined by.....

Section

File No.

Serial No.

No. 2354

To .....

Dear Sir, Varadwami Iyer,

I have received the copy of the reply statement you propose to file on behalf of the Awami Waqf in O.S. 28 of 31-32 in the Sub court, Bangalore, sent with your letter no. 244/31-32 of 22nd instant. But I do not find therein the note which you said you had sent regarding the maintainability of the suit. I shall be much obliged if you can come over here any day

over

WD 02327—GPB—5,000—18-4-36

32

Convenient to you so that we might have a talk over the matter.

Yours sincerely

[illegible]

26/10

G.S. Doraswami Iyer Esq BTAL

P.P. Blore.

Confidential

17223
P.

D.O. No. 254/31-32
encl 3 sheets

Office of the Public Prosecutor,
Bangalore Division.
Dated, Bangalore 28th October 1931.

Dear Mr. Jaya Rao,

With reference to your D.O. No.P.2354, I am sending herewith a note on the Avani Mutt Case, (Original Suit - No. 21 of 1931-32 on the file of the Sub Court, Bangalore). Probably all the facts were not placed before Government, and hence I am taking the liberty of sending this note. Ofcourse I shall act according to the instructions of the Government and conduct the case as I am directed to. As I am engaged in a Sessions Case which is going on from day to day from 11 A.M. to 5 P.M., I regret my inability to see you during office hours. I shall see you any morning at your place.

Yours sincerely,

S Doraiswamy Iyer

N. R. Jaya Rao, Esq., M.A., LL.B.,
Asst. Secretary to Government,
General Department, BANGALORE.

Office of the Public Prosecutor,
Precincts Division.
Dated, Secretariat, 28th October 1951.

S.O. No. "

Dear Mr. Jaya Rao,

With reference to your U.O. No.P.P.1, I am serving herewith a note on the known fact (Unlisted Suit - No. 21 of 1951-52 on the file of the Sub Court, Bangalore). Probably all the facts were not clear before Government, and I am taking the liberty of sending this note. Otherwise I shall be according to the instructions of the Government and conduct the case as I am directed to. As I am engaged in a Secretariat Case which is coming on from day to day from 11 A.M. to 5 P.M., I regret my inability to see you during office hours. I shall see you some morning at your place.

Yours sincerely,

M. P. Jaya Rao, Esq., M.A., B.L.,
Govt. Secretary to Government,
Secretariat Department, BANGALORE.

CONFIDENTIAL.

Facts.

On 17-5-1920, one N.Balaji Rao filed a suit in the Court of the Subordinate Judge at Bangalore - against Sri Vidya Sankara Bharati Swamigal of Sri - Avani Mutt for Rs.3,256/- on two pro-notes,one for Rs. 400/- dated 4-5-1917 and another for Rs.1,600/- dated 13-5-1917 and for interest, alleging that the amounts were borrowed for purposes of necessity of the Mutt, to wit, the purchase of an elephant, and praying for a decree against the Swami personally and also against the properties of the Mutt.

On 26-9-1921 the suit was decreed ex parte as per plaint and a decree was drawn up against the defendant and also against the properties of the Mutt.

On 17-5-1926 the Deputy Commissioner of Kolar filed an application under Order IX Rule in Miscellaneous No. 354 of 25-26 for the setting aside of the ex parte decree. Application was dismissed for want of prosecution on - 26-5-1927. This application was filed against the legal representatives of the decree-holder Balaji Rao who had died by that time. No further steps were taken against this order.

The legal representatives of the decree-holder, - Nagaraja Rao and others then filed an execution application in Execution No.2544 of 24-25 against the District Muzrai Officer, Kolar and Abhinava Vuddanda Bharathi - Swamigal of Avani Mutt praying for the realization of

the

the decree amount by attachment and sale of the Mutt properties and also for sale of the live-stock of the Mutt. The opponent filed an objection statement to the execution petition. The learned Sub Judge passed an order on 27-9-30 holding that the objections were untenable on the ground that in execution proceedings the validity of the decree cannot be questioned.

The Deputy Commissioner, Kolar and the present Swami of the Avani Mutt then filed a suit in O.S.No. 118 of 1930-31 in the Sub Court, Bangalore, for a - declaration that the ex parte decree passed in O.S. No.93 of 1919-20 on the file of the Sub Court, Bangalore, against the late Swami of Sri Avani Mutt and the properties of the Mutt is not binding on his successor and the Mutt property and also for a permanent injunction restraining the defendant from executing the said decree. This suit was filed against the deceased original plaintiff in O.S.No.93 of 19-2(and when this mistake was discovered, the suit was - withdrawn on 12-8-1931.

A fresh suit was again filed on 17-8-1931 by the present Swami and the Deputy Commissioner, Kolar, in O.S.No.21 of 1931-32, against the legal representatives of the deceased decree-holder praying for the same reliefs as in O.S.No.118 of 1930-31.

The defendants have filed a written statement, a copy of which is ~~herewith enclosed~~ has been sent for reference.

The suit is posted to 3-11-31 for the plaintiffs to file a reply.

Note.

NOTE.

This suit has been filed for a declaration that the decree in O.S.No.93 of 1919-1920 is not binding on the present Swami of the Avani Mutt and on the properties of the Mutt. The relevant portion of the decree reads thus "It is ordered and decreed for plaintiff - for Rs.3,256/-, costs and current interest at 6 per - cent per annum from the date of suit up to the date of realization against the defendant and the properties of the Avani Mutt."

That decree was passed ex parte on 26-9-21. The application to have the decree set aside was dismissed. No appeal was filed against that order under - Order 43 Rule 1 nor was another application filed to set aside that order of dismissal. No application - for review of the judgment in O.S.No.93 of 19-20 was filed. The present suit was filed on 17-8-1931. The cause of action is stated as 5-11-1926 when an attachment was effected.

There is no allegation in the plaint of either - fraud or collusion.

A suit to set aside a decree can be maintained on ground of fraud or collusion or mistake. A suit will lie for the setting aside of an ex parte decree if it is proved that there was a fraudulent suppression of summons at the instance of the plaintiff. The fraud must be extrinsic and not intrinsic 24 M.C.C.R. Pp.257 (FB).

In

In A.I.R. 1923 Cal.569 Ghose & Panton JJ have - held that a decree cannot be set aside even if summonses were not served if there is no finding that there was fraudulent suppression of summons at the instance of the defendant.

In 71 I.C.962 Woodroffe & Suharwady JJ have held that the mere fact that notice was not served is not fraud and go to the length of saying that even if the original claim was untenable, it is no ground for setting aside of the decree.

In 10 I.C. 905 it is held that the dishonesty of the original claim is no ground for setting aside of the decree.

In A.I.R. 1928 Lahore 766 it is held that a party to a decree is not entitled to have the decree set - aside on the ground that it was wrong. Reference is made in the judgment to 41 Cal.990 & 43 Cal. 217.

In 1925 Cal. 785 it has been held that a decree cannot be set aside on the ground that it was erroneous.

In 1926 A.I.R. P.C.Lord Atkinson in Page 117 in - discussing the case of Prosonnu Kumar Debya V Golabchand says "It was held that the decrees being untainted by fraud or collusion and having been passed after the necessary and proper issues were raised and determined were entitled to the force due to judgments of competent - Courts and were binding on the succeeding shebaits who were continuing representatives of the idols property."

In this case though no doubt no issues were framed, the ex parte decree has been validly passed.

In A.I.R.1922 Madras 404 Coutts Trotter & Ramesam JJ have held that even perjury and suppression of facts is not sufficient to set aside a decree once passed.

In 1928 Lahore 178 Harrison & Jailal JJ it is - held that a decree once passed can only be set aside on the ground of fraud and it cannot be set aside on the ground of mistake when the mistake was not the - mistake of the parties but of the Munsiff. In this case they considered that however the plaint was - framed if it was a suit for nothing more nor less - than a suit to circumvent and set aside a decree, - still the principle would apply.

In 22 M.C.C.R. 307 Chandrasekhara Iyer and Paramasiva Iyer JJ have held that a person against whom an ex parte has been passed cannot maintain a suit to set it aside unless he make out that he was prevented by any act on the part of his opponent from appearing and placing his defence before the Court in the previous suit.

In A.I.R. 1923 Rangoon 82 the learned Judges - refused to set aside a decree on the ground that the accounts having been suppressed in the previous suit.

In 46 I.C.569 it was held that even though a - decree was obtained on a time-barred claim that itself was no ground for setting aside the decree.

Although the prayer in the present suit is for a declaration that the decree in O.S.No.93 of 19-20

is

is not binding on the Mutt properties and the present Swami, yet it virtually amounts to a prayer for the setting aside of that decree.

In the light of the above decisions I am ~~sorry~~ not certain ~~[illegible]~~ about the maintainability of the suit, especially when there is no allegation of fraud or collusion, & I would like to be instructed in the matter.

Whether the decree is binding upon the successor or not, it specifically charges the properties of the Mutt.

The question of limitation has also to be considered.

Public prosecutor,
Bangalore

1865/46
P 31

No. 286/31-32
encl 1 file

Office of the Public Prosecutor,
Bangalore Division.
Dated, Bangalore 4th Novr. 1931.

From

The Public Prosecutor,
Bangalore Division, BANGALORE.

GENERAL SECRETARIAT
4 NOV. 1931
No. 1865

To

The Secretary to the Government
of H. H. The Maharaja of Mysore,
General Department, BANGALORE.

Sir,

Re: O. S. No. 21/31-32 on the file of the Sub Judge, Bangalore. (Avani Mutt Vs. D. Nagaraja Rao and two others).

I have the honor to inform you that the above case was posted to 3-11-1931 for filing reply. I have taken time till the 18th Novr. 1931 for filing the same. The records are sent as desired.

I have the honor to be,
Sir,
Your most obedient servant,

S Doraswamy Ayyangar

Public Prosecutor.

2146 1931 41

38/31-32

SECRETARIAT
20 NOV. 1931
From No.

Office of the Public Prosecutor,
Bangalore Division.
Dated, Bangalore 19th November 1931

The Public Prosecutor,
Bangalore Division, BANGALORE.

To

The Secretary to the Government
of H. H. The Maharaja of Mysore,
General Department, BANGALORE.

O.S.21/31-32 on the file of the Sub Judge Bangalore. (Avani Mutt Vs. D. Nagaraja Rao and others).

I have the honor to state that the above was o 18th instant for filing reply and I have taken time till the 1st December 1931 for the same. I request that the reply statement may kindly be sent to me before that date.

I have the honor to be,
Sir,
Your most obedient servant,

S Doraswamy Rao
Public Prosecutor.

42

Appendix F G—1]

SUBJECT .....

.....

.....

Section

File No.

Serial No.

No. of letter replied to ..... No 2965

To The Public Prosecutor

Bangalore

General and Revenue Secretariat

( ) Sir,

the 193 . With reference to

of issue 25/11/31 the Correspondence ending with

Your letter no 338/31-32 dated

Rep'd by 19th nov 1931 requesting to send

the reply Statement to be filed

in OS. 21/31-32 on the file of the

Sub-Judge B'lore (Avani Mutt vs

D. Nagaraja Rao & others) before

1st Dec 1931 I am directed

to return herewith all the

of enclosures .....

enclosures received with your letter

Copied by ..... No 2464/31-32 d 22nd Oct 1931 and

286/31-32 d 4th nov 1931 respectively

Examined by ..... and to request you to meet

WD 71—GPBM—40,000—20-7-31.

43

The
the Govt. Ad. with necessary records
as he wishes to discuss the matter with
early, at least you & any other officers with
You as to the
and settle the line of action
in the case
to be adopted in the best
interests of the Mutt.

A further report
Action taken in the matter
rent
things kindly be intimated for
information of Govt early

I have etc

ISD
24/11

DDP
20/11 for Govt see

Appendix F G—1]

SUBJECT .....

.....

.....

General and Revenue Secretariat

( )

the *193*

Date of issue 26/1/31

Signed by Mr Hay

Diary No. of letter replied to .....

List of enclosures .....

Copied by .....

Examined by .....

Section

File No.

Serial No.

No 3490

To The PPr. Bangalore.

Sir,

With reference to Your letter no. 437/31-32 dated 18th Dec 1931 intimating that O.S. 21/31-32 on the file of the Sub Judge B'lore (Swami of Arani Mutt vs D. Nagaraja Rao) stands posted to 7.1.32 I am directed to request that Copies of the Written Statement and the reply statement filed in the Case may kindly be sent for information of Govt early.

I have the

Copied by 15/1/32

for Ch. Sec'y

2934 p 345

No. 461/31-32
encl 7 sheets

Office of the Public Prosecutor,
Bangalore Division.

Dated, Bangalore 5th January 1932.

From

The Public Prosecutor,

Bangalore Division, BANGALORE.

To

The Chief Secretary to the Government
of H. H. The Maharaja of Mysore,
BANGALORE.

Law
CHIEF SECRETARY
5 JAN. 1932

Sir,

Re: Original Suit No.21 of 31-32 on the file of the Sub Judge, Bangalore. (Avani Mutt Vs. D. Nagaraja Rao and two others).

I have the honor to forward herewith copies of the Written Statement and Reply in the above case, for the information of Government, as desired in your letter No.P.3490/Law. dated the 26th December 1932.

I have the honor to be,

Sir,

Your most obedient servant,

S Doraswamy Iyer

Public Prosecutor.

46

In The Court Of The Subordinate Judge At BANGALORE.

Original Suit No 21 of 1931-32.

1.Sree Vidyaranya Bharathi Swami of Avani Mutt;
2.The Deputy Commissioner and - Muzrai Officer, Kolar. — Plaintiffs.

-vs-

1.B.Nagaraja Rao, 2.B.Nana Rao and 3.B.Seshagiri Rao. — Defendants.

The written statement of defendants under Order VIII Rule 1 of the Code of Civil Procedure:-

The defendants humbly beg to state as follows:-

1. The suit is not maintainable.

2. The allegations in the plaint are not true and correct. These defendants do not admit any of the allegations - in the plaint except those which are herein expressly admitted by them.

3. It is true that the deceased Balaji Rao, the father of defendants filed O.S.No.93 of 1919-20 on the file of this Court and these defendants obtained a decree against the late Swami and the properties of the mutt for moneys due under the promissory notes dated 4-5-1917 and 13-5-1917 for Rs.400/- and Rs.1600/- respectively, for Rs.3256/- and costs and further - interest at 6 per cent per annum.

4. The allegations in para 4 of the plaint are not true. The defendants learn that the summons in that suit was duly - served on the late Swami. The decree was obtained legally on 26-9-1921, against the late Swami and the mutt properties. The plaintiff's allegation that the decree was obtained wrongfully against the properties of the mutt is not true and correct.

In The Court of The Subordinate Judge at BANGALORE

Original Suit No. 61 of 1931-32.

Sree Vidyaranya Bharathi Swami
of Kaval Mutt;

Plaintiff.

The Deputy Commissioner and
Kural Official, Kolar;

Defendants.

Va-

1.2. Nagaraja Rao, B.B.Mane Esq.
Mrs. B.B.Nagarathnamma.

Defendants.

The written statement of defendants under Order VIII Rule 1 of the Code of Civil Procedure:-

The defendants humbly beg to submit as follows:-

The suit is not maintainable!

The allegations in the plaint are not true, in correct. Hence they cannot be admitted by the plaintiff in the plaint except those which are herein expressly admitted

3. It is true that the said Sri [illegible] the father of defendants filed O.S.No.93 of 1919-20 in the file of this Court and the proceedings were transferred to Bangalore City Civil Court and the proceedings of the suit for monies due under promissory notes dated 4-9-1912 for Rs.4000/- and Rs.1500/- respectively for which Rs.8500/- was decreed in favour of the plaintiff. The defendants have obtained a decree against the plaintiff's attachment before judgment which was subsequently made absolute. The decree was obtained legally on merits. The defendants submit that the suit was duly served on the late Swami. The decree was obtained legally on merits. The defendants submit that the suit was duly served on the late Swami and the matter properly. The plaintiff's attachment before judgment which was subsequently made absolute was set aside on 26-9-1931, against the interest and the matter properly. The

The allegations in para 4 of the plaint are not true and incorrect.

5. It is true that the said Sri [illegible] the father of defendants 1 & 2 filed O.S.No.61 of 1931-32 in the file of this Court for the recovery of monies due under promissory notes dated 4-9-1912 for Rs.4000/- and Rs.1500/- respectively. The defendants submit that the suit was duly served on the late Swami and the matter properly. The plaintiff's attachment before judgment which was subsequently made absolute was set aside on 26-9-1931, against the interest and the matter properly. The

5. The plaintiff's allegations in paras 5 and 6 are not true and correct. The debts were contracted by the late Swami, fornecessary purposes of the suit. The mutt had to - purchase an elephant for the necessity of the mutt and towards this the debts were contracted. The defendants learn that with these amounts the elephant was purchased, and now form the assets of the mutt. The defendants' father had to borrow money from others at 36 % per annum anu lend the money to the mutt. The pro note dated 13-5-1917 alone bears interest at 36 per annum while the other pro note bears interest at 6 % per an num. The interest is not exhorbitant. That is the rate which was prevalent then and at which the defendants' father had to borrow from others in order to oblige the mutt. The late Swami borrowed the mutt amounts not for his private and personal - purposes as alleged by the plaintiffs but only for the neces- sities of the mutt and real benefit of the mutt.

6. The allegations in paras 7 and 8 of the plaint are not correct and true. The decree in O.S.93 of 1919-20 is valid and binding on the plaintiffs. The suit was filed on 17-5-1920 praying for a decree against the late swami and the properties of the mutt. The case was heard and evidence was taken and a decree was passed against the late Swami and against the pro- perties of the mutt on 26-9-1921. The decree is not only a - personal decree against the late swami but is also a decree - against him making the suit properties liable for the decree amount. At that time the late Swami was in sole charge of - the mutt properties. The decree is passed against the suit properties also. For the amount due under the decree the mutt money is attahhed now and the execution petition E.P.2544/1924-25 is pending in this Court. The second plaintiff is delaying - sending the attached amount into court from 5-11-1926.

7. The plaintiffs were brought in as the legal representatives of the mutt properties in the year 1925 and the attachment of the mutt money was ordered. The plaintiffs objected to the attachment made in R.E.P.2544 of 1924-25 without success. The plaintiffs filed a miscellaneous application No.354 of 1925-26 to set aside the decree in O.S.93 of 1919-20. These defendants filed objections to the plaintiffs' application. The application was fully heard and was ultimately dismissed. The plaintiffs' only remedy was an appeal from that order of dismissal in M.P.No.354 of 25-26 and they have not preferred any appeal from that order. The plaintiffs now cannot be allowed to question the terms of the decree in this suit.

8. The allegations in paragraph 9 are not correct. The objections of the plaintiffs to the attachment of the mutt properties for decree amount was rightly rejected by this court on 24-10-1930. This Court on its execution side could not question the validity or terms of the decree. The objections could only have been urged as defence to the original Suit No.93 of 1919-20. The order of this Court passed on 24-10-1930 over-ruling the objections of the plaintiffs cannot in law give any remedy to plaintiff to file this suit. The terms or the scope of the order is not given correctly in the plaint.

9. If the plaintiffs are dissatisfied with the order passed in R.E.P.2544 of 1924-25 on 24-10-30, the only remedy for the plaintiffs is an appeal against that order under Section 47 of the Code of Civil Procedure and not an Original Suit like this and such a suit is barred in law.

10. The plaintiffs' present suit is not maintainable in law. No suit lies in law to set aside an ex parte decree. The plaintiffs have further filed M.P.No.354 of 1925-26 to set aside the ex parte decree. They were unsuccessful there. They ought to have appealed against that dismissal order if they were really aggrieved by that order. The present suit is not the remedy to

to set aside the dismissal order passed in Misc: Application No. 354 of 25-26 or to set aside the order passed on 24-10-1930 in R.E.P. 2544 of 24-25, over-ruling the objections to attachment of mutt properties.

11. The dates of causes of action are not correct. Neither 5-11-1926, the date of attachment, nor 24-10-30, the date of order in R.E.P.2544 of 1924-25 can give plaintiffs any cause of action for this suit. The date of decree is the only date of cause of action if any for this suit.

12. The suit is hopelessly barred by the law of limitation. The suit is brought more than three years from 26-9-1921, the date of the decree. The suit is also filed more than six years from the date of knowledge of the decree by plaintiff.

13. The plaintiffs' reliefs claimed in the plaint are also barred by the rule of res judicata by the decree in O.S. 93 of 1920. The plaintiffs are also estopped from questioning the decree now as they are the legal representatives of the deceased judgment-debtor.

14. The defendants learn that the plaintiffs had also brought O.S.118 of 1931-32 on the file of this Court to set aside the decree alleging that the cause of action arose on 5-6-1925 against the father of defendants (deceased) and the suit was dismissed on 12-8-1931 as being filed against a dead man. That dismissal also is a legal bar to this suit.

15. The plaintiffs being the legal representatives of the Mutt in possession of the Avani Mutt properties, cannot maintain this suit and ask for the reliefs now claimed in the plaint. The suit is insufficiently stamped and plaintiffs ought to pay advolerem stamps duty on the decretal amount.

16. The plaintiffs are not entitled to any of the reliefs claimed

claimed in the plaint in law or equity. The value for purposes of court-fee is incorrect. The plaintiffs are to pay court-fee on decree amount.

17. Therefore the defendants humbly pray that this Hon'ble Court may be pleased to dismiss the suit with costs of the defendants and render justice.

We the defendants do hereby declare that what is stated above is true to the best of our knowledge and information and we sign this at Krishnagiri on 20-9-31.

5-10-1931.

"Copy"

S. Ramaswamy Iyer
public prosecutor,
Bangalore

57

IN THE COURT OF THE SUB JUDGE, BANGALORE.

ORIGINAL SUIT No.21 OF 1971-72.

1. Sri Vidyaranya
Bharati Swami
of Avani Mutt.

2. The Deputy Commissioner
& Muzrai Officer, Kolar. } Plaintiffs.

-VS-

1. Nagaraja Rao
and others. Defendants.

The Plaintiffs abovenamed file the following reply to the Written Statement filed b the Defendants.

1. The suit as brought is maintainable. The defendants cannot plead that the suit is not maintainable without stating the grounds as to why and how it is not maintainable.

2. The Plaintiffs do not admit the allegations in para 2 of the written statement. Original Suit No.93 of 1919-20 on the file of this court was a suit against the late Swami and not against the properties of the Mutt.

3. The Plaintiffs deny the allegations in para 4 of the written statement and state that the decree was wrongfully obtained against the properties of the Mutt. They do not admit that the Summons was duly served

4. The Plaintiffs deny the allegations in para 5 of the written statement and reiterate the averments in paras 5 and 6 of the Plaint. The Plaintiffs deny that the debt was contracted for purposes necessary to the Mutt. The rate of interest is exhorbitant.

5. The allegations in para 6 of the written statement are not true. The decree in original suit No.93 of 1919-20 was obtained exparte. The allegations that thecase was heard and the evidence taken are totally false. The attachment of the monies is not valid.

6. The Plaintiffs do not admit the allegations in paras 7, 8, 9, 10 and 11 of the written statement.

7. The suit is not barred by the law of Limitation and the law as stated in para 12 of the written statement is not correct.

8. The suit is not barred by the principles of Res Judicata, as the previous suit was not heard and finally decided, and for other reasons.

9. The allegations in para 14 of the written statement do not act as a bar to this suit.

10. The Court Fee paid is sufficient.

11. The Plaintiffs deny all the other allegations in the written statement which are not

not expressly denied herein.

I2. The Plaintiffs pray for a decree as per Plaint.

We, the Plaintiffs abovenamed, do hereby declare that what is stated above is true to ~~the~~ our knowledge.

KM

" Copy "

O. Donnacuna Esq.
public prosecutor,
Bangalore

3039/P 31/53 -

No. 488/31-32 Office of the Public Prosecutor,
Bangalore Division.

Bangalore 9th January 1932.
11th

From

The Public Prosecutor,
Bangalore Division, BANGALORE.

To
CHIEF SECRETARY
12 JAN. 1932

The Chief Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

Sir,

O. S. No.21 of 31-32 on the file of the Sub Judge, Bangalore. (Avani Mutt Vs. D. Nagaraja Rao and others).

I have the honor to state that I filed the reply on 7-1-1932 copy of which has already been sent to you, and the case stands adjourned to the 13th instt. for filing draft issues.

I have the honor to be,
Sir,
Your most obedient servant,

For Perusal.

12/1

Public Prosecutor.

KNM

Kindly send a draft for the report

3480/31 p 54

No. 519-520
Encl.

Office of the Public Prosecutor,
Bangalore Division, B'LORE.
31st January 1932.

From
G.S.Doraswamy Iyer, Esq., B.A., B.L.,
Public Prosecutor, Bangalore Division
Bangalore.

The Chief Secretary
to the Government of Mysore, BANGALORE.

Re: O.S.No.21 of 31-32 on the file of the Sub Judge, Bangalore (Avani Mutt VS D.Nagaraj & others)

With reference to your letter No.P.4233/Law of the 29th instant I have the honour to state that - draft issues were filed on the 13th instant and issues were also framed by Court, a copy of which has been applied for and the same will be sent after receipt.

The case is posted to the 16th February 1932 for arguments re: maintainability of the suit.

I have the honour to be,
Sir,
Your most obedient servant,

G.S.Doraswamy Iyer
Public Prosecutor.

3660/37
P 55

No 569/31-32
encl 2 sheets

Office of the Public Prosecutor,
Bangalore Division.

Bangalore 10th February 1932.
11th

From

The Public Prosecutor,
Bangalore Division, BANGALORE.

SECRETARY
Govt.
FEB. 1932

To

The Chief Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

Sir,

Re: O. S. No.21/31-32 on the file of the Sub Judge, Bangalore. (Avani Mutt, Vs. D. Nagaraja Rao and 2 others).

In continuation of this Office letter No.519, dated the 31st January 1932, I have the honor to forward herewith for the information of Government, the certified copy of the Issues adopted by the Court, in the above case.

I have the honor to be,
Sir,
Your most obedient servant,

Public Prosecutor.

TWO ANNAS
GOVERNMENT OF MYSORE
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Filed in Court (Sd) H.K.V. Subjes
13.1.32.

Approved (Sd) HKV Sub Judge
27.1.32.

In the Court of the Sub-Judge, Bangalore.

OS 21/31-32

Plaintiffs:- 1. Swami of Avani Mutt 2. The Deputy Commissioner Kolar.

vs.

Defendants:- Nagaraja Rao & 2 others

Draft issues filed on behalf of Plaintiff.

1) Is the decree in O.S. 93/19-20 on the file of the Sub Judge, Bangalore not valid and binding on the plaintiff and the Mutt Properties?

2) Were the ~~prof~~ promotes executed for legal necessity or the benefit of the Mutt or were they for the private purposes of the late Swamiji

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TWO ANNAS

GOVERNMENT OF MYSORE

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2:-

(3) Did the late Swamiji intend to bind the properties of the Mutt?

(4) Is this suit barred for the reasons stated in paras 9, 13 and 14 of the written statement?

(5) Is the suit barred by limitation?

(6) Is the Court fee paid sufficient?

Bangalore 13.1.32. (Sd) S.S. Doraswamiyer
Counsel for plaintiffs

True copy

K. Bhatta Sastry

Asst to Dda

words 140

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Mr. S. P. Sammandan Writer Applied for 4.2.32	Mr. Dennany 9.2.32	6/2/32		

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OFFICE OF THE PUBLIC PROSECUTOR,
Bangalore DIVISION, 58
DISTRICT OFFICE BUILDINGS.

No. 552/32-33

Enc. (3)

Dated 12th January *1933.*

FROM

The Public Prosecutor,
Bangalore *Division,*
Bangalore

To

The General Secretary to the
Government of Mysore, Bangalore

GENERAL SECRETARY
16 JAN. 1933
No. [illegible]

SIR,

Subject :— O.S. 21/31-32 on the file of the Sub-judge, Bangalore (Swami Mutt to D. Nagarajarao & others

I have the honor to state that the above case has been adjourned to the 16/1/33 for objections to the application filed by the defendants for examining their witnesses who are at Krishnagiri on Commission. I request instructions in the matter. Copy of objection statement is enclosed herewith for reference and return

rel. appln by defendants.

I have the honor to be,
Sir,
Your most obedient servant,

D Doraswamy Ayr
Public Prosecutor.

WD 01551—GPB—900—5-5-32

Hrk 13-12-1932. 59 3

IN THE COURT OF THE SUBORDINATE JUDGE, BANGALORE.

Sl: No. Of 32-33.

O.S.No. 21 Of 31-32.

GEN

PETITIONERS (DEFTS):- OPPONENTS (PLFS):-

1. B. Nagaraja Rao & another. - Vs - 1. Sri Vidyaranya Bharati Swami of Avani Mutt & another.

UNDER ORDER XXVI, RULE 4, OF THE C. P. CODE.

That for reasons mentioned in the accompanying affidavit the petitioners - defendants pray that the Hon'ble Court will be pleased to issue a commission to District Munsiff of Krishnagiri, Salem District or some other competent person there to examine the undermentioned witnesses and record their evidence and render justice. The petitioners are prepared to deposit in Court the expenses of the said Commission.

List of Defendants Witnesses.

1. C.Venkata Rao, son of Shankar Rao, Pleader, Krishnagiri, Salem District.

2. D.S.Nandasami Iyer, son of D.R.Seshagiri Iyer, Pleader, Krishnagiri, Salem District.

3. Krishnagiri.

4. Lakshminarasu Joiar, Krishnagiri.

5. Venkatachelliah, Native Doctor, Krishnagiri.

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6. Ramasubba Sastry, Josiar, Krishnagiri.

7. Subramanya Ayya, son of Rama Bhatlu, Krishnagiri.

8. Krishna Iyer, clerk, Muthukarupan Chetty Bank, -do

9. Subba Iyer, Krishnagiri.

Bangalore;
31st October 193..

61

IN THE COURT OF THE SUBORDINATE JUDGE, BANGALORE.

O. S. No. 21 of 1931-32.

PLAINTIFFS:-

Sri Vidyaranya Bharati - Vs - Swami of Avani Mutt & another.

DEFENDANTS:-

1. B.Nagaraja Rao & 2 others.

Affidavit.

I, B.Seshagiri Rao, son of N.Balaji Rao, aged about 26 years, Mittadar, residing at Krishnagiri, Salem District, do hereby state on solemn affirmation as follows:-

1. That I am the 3rd defendant in the above suit.

2. That the above suit is posted to ~~18-12-32~~ 9-1-33 for hearing the evidence of witnesses.

3. That all the defendants witnesses are permanent residents of Krishnagiri, Salem District outside the territories of His Highness the Maharaja of Mysore and are not subject to the jurisdiction of this Court.

4. That most of the defendants witnesses are professional business men who are not k likely to appear before this Court even if summonses are issued to them.

5. That this Court has no power to compell the attendance of defendants witnesses who are residing outside its jurisdiction.

6. That besides the cost involved in enforcing the attendance of defendants witnesses will be disproportionately heavy and the proceedings in this suit will also be inordinately delayed.

That in the interest of justice it is necessary that an open commission should be issued to the District Munsiff of Krishnagiri or any other competent person there authorising and directing him to examine the defendants witnesses mentioned in the accompanying petition.

Bangalore,
31st October 1932

No P. 4032

20th January 1933.

The

The Public Prosecutor

Bangalore

O.S. 21/31-32 on the file of the Sub Court, Bangalore
(Avani Mutt Vs D.Nagaraja Rao and others).

With reference to your letter No. 552/32-33 dated 12th January 1932 enclosing copy of the application filed by the defendents for examining their witnesses on commission, I am directed to state that a copy of the objection statement said to have been sent is not received, and to request that the same may kindly be sent for reference and return.

Since your letter was received only on 16th instant necessary instructions could not be given in time.

The next date of hearing may kindly be intimated.

I have the honour to be,

Sir,

Your most obedient servant,

For General Secretary to Government

TSD

2TSS.

64

Appendix F G—1]

SUBJECT .....

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Section

File No.

Serial No.

Diary No. of letter replied to .....

No. P.4032

To The PPr. B'lore

O.S. 21/31-32 on the file of the Sub-Ct. B'lore (Avani Mutt vs D. Nagaraja Reddy & ors)

General and Revenue Secretariat

( )

the *193* .

Date of issue 20/1/33

Signed by Jn C.S. Iyer

Sir,

With reference to your letter no. 5512/32-33 dated 12.1.33 enclosing copy of the application filed by the defendants for examining their witness on Commission, I am directed to state that a copy of the objection statement said to have been sent is not received, and to request that the same may kindly be sent for reference and return.

Since your letter was received only on 16th inst. necessary

List of enclosures.....

Copied by Mohd.

Examined by.....

WD 0253—GPB—15,000—26-8-32

instructions Could not be given in time.

The next date of hearing

may kindly be intimated.

I have &c

for Gen Secy

ISD
18/1

3804
S 278 Dt 31

4064 2/6
P 8002

No. 617/32-33

Enc. (1)

OFFICE OF THE PUBLIC PROSECUTOR,
BANGALORE DIVISION,
DISTRICT OFFICE BUILDINGS,

Bangalore, 28th January 1933.

FROM

G. S. Doraswamy Iyer, Esqr. B.A., B.L.,
Public Prosecutor,
Bangalore Division, Bangalore.

To

GENERAL SECRETARY
30 JAN. 1933
No. P20

The General Secretary to the Government of Mysore. Bangalore

SIR,

CC 30/ With reference to your letter No P 40 32 dated the 20th instant I have the honour to state that by an ~~mistake~~ oversight it was stated that a copy of the objection statement had been sent instead of the copy of the application filed by the defendants for Examining their witnesses on Commission which had been sent to you for your reference and return An objection was filed in Court according to the instructions of the Deputy Commissioner. Kolar on 24. 1. 33, a copy of which is enclosed herewith for the information of Government, the Court has passed orders allowing the application and directing the defendants to deposit a Commissioner's fee of Rs 50/- by 6. 2. 33. As the witnesses will have the cross examined at Krishnagiri the instructions of the Deputy Commissioner, Kolar have been ~~requested~~ solicited, as to the arrangements that will have to be made there

I have the honour to be,
Sir
Your most obedient Servant

In the Court of the Sub-Judge
Bangalore

OS 21/31-32

Plaintiffs	Defendants
1) Swami of Sri Avani Mutt	Nagarajaiah & others
2) The Deputy Commissioner Kolar	

The plaintiffs file the following objections to the application filed by the defendants for examining their witnesses On Commission at Krishnagiri.

1) The application is belated and involves considerable cost and delay

2) The application does not contain sufficient grounds for its being granted by the Court.

The plaintiffs pray that the application may be dismissed with costs

"Copy"

S Doraiswamy Sr

5301/32
P 88

No. 795/32-33

Office of the Public Prosecutor,

Bangalore Division,

Bangalore, 31st March 1933.
12th April

From

The Public Prosecutor,

Bangalore Division, Bangalore.

To

SECRETARIAT

The General Secretary to the Government of H.H.

the Maharaja of Mysore, Bangalore.

Dc Law

Sir,

O.S.NO.21/31-32 on the file of the Sub-Judge, Bangalore. (Swami of Avani Mutt V/S. D.Nagaraja Rao and others)

I have the honour to state that Mr. T.S. Ramaswamy Iyer, B.A.,B.L., Advocate, Bangalore is appointed as Commissioner and the case is posted to 29-5-33 for return of Commission.

I have the honour to be,

Sir,

Your most obedient servant,

T.S. Ramaswamy Iyer.

Public Prosecutor,

Bangalore.

Subd for perusal.

6/4

6/4

1908-9/34

No. 374/34-35

Enc. Copy of judgment & decree

OFFICE OF THE PUBLIC PROSECUTOR,
BANGALORE DIVISION,
DISTRICT OFFICE BUILDINGS,

Bangalore,.....27th September.....*1934*.

Law 93-30.

FROM

G.S. Doraswamy Iyer, Esq.,B.A.,B.L.,
Public Prosecutor,
Bangalore Division, Bangalore.

GENERAL SECRETARY
29 SEP 1934

To

General Secretary to the Government of H.H. the Maharaja of Mysore, Bangalore.

29/9/34

SIR,

I have the honour to forward herewith for information of ~~the~~ Government the copy of judgment and decree in O.S.No.21/31-32 on the file of the Subordinate Judge, Bangalore.(Avani Mutt -VS- D. Nagaraja Rao and others). All the findings ~~are~~ in our favour except the find-~~ings~~ing on the 2nd issue.

I have the honour to be,
Sir,
Your most obedient servant,

G S Doraswamy Iyer
Public Prosecutor.

KHR.

V/1908/p.7

106 2453 p>34

In all future correspondence please quote this
No. A2-C.890/30-31.
Encls. One.

OFFICE OF THE DEPUTY COMMISSIONER,
KOLAR DISTRICT.

Dated, Kolar, the 31st October *1934*.

FROM

T. G. RAMA IYER, ESQ., B.A.,
Deputy Commissioner,
Kolar District.

To

R.Ranga Rao.,Esq.,B.A.,B.L.,
Chief SECRETARY TO GOVERNMENT OF MYSORE,
~~Department~~,
Bangalore.

SIR,

O.S.No.21/31-32 on the file of the Subordinate Judge, Bangalore.
(Sri Avani Mutt - Vs. D.Nagaraja Rao and others).

I have the honour to forward herewith copy of the Public Prosecutor's letter No.461/34-35 dated the 25th October 1934 opining that it is a fit case for appeal and to request you to be so good as to obtain orders of Government authorising the Government Advocate to file an appeal if he agrees with the Public Prosecutor.

I have the honour to be,
Sir,
Your most obedient servant,

Deputy Commissioner,
Kolar District.

A.R.2.
311034.

W.O.
The main file is referred to the Govt. Counsel on 30.10.34
Issue
1/11/34

SECTT.

Letter No.461/34-35 dated 25th October 1934, from the Public - Prosecutor, Bangalore Division, Bangalore, to the Deputy Commissioner, Kolar District.

Re: O.S.No.21/31-32 on the file of the Subordinate Judge, Bangalore. (Sri Avani Mutt -Vs- D.Nagaraja Rao and others).

===

With reference to your letter No.A2-890/30-31 dated the 1st October 1934 and in continuation of this office Memo No.401/34-35 dated the 6th instant, I have the honour to furnish my opinion below.

In this case the Subordinate Judge has found in our favour on all the issues except one. The learned Judge finds that an elephant is a - necessity for the mutt although the evidence in the case is to the - contrary. Legal necessity does not mean maintaining pomp. Unless there was legal necessity a decree cannot be passed against the properties of the mutt. So far as this point is concerned it is a fit case for - preferring an appeal.

But it is a matter for consideration whether the suit which is filed to set aside the decree passed against the properties, is maintainable. The Madras High Court has held that it is (see 47 M.L.J. 85, 1919 M.W.N. 707, 46 I.C.534, 60, M.L.J.590). Our High Court in 26 M.C.C.257 and - 22 M.C.C. 307 has held that unless there is extrinsic fraud a decree cannot be set aside.

But as these are arguable points an appeal may be preferred and a decision obtained from the High Court instead of deciding not to prefer an appeal, especially as the amount due under the decree is now a large one.

As regards the copy of judgment and decree, the General Secretary to the Government of His Highness the Maharaja of Mysore, Bangalore in his letter No.P.1884 dated the 20th instant has replied that the entire file has been referred to the Government Advocate for his opinion in the matter.

=====

" C O P Y "

Deputy Commissioner,
Kolar District.

A.R.311034.

109

In all future correspondence please quote this
No. ..... Encls. A2-C.890/30-31.

OFFICE OF THE DEPUTY COMMISSIONER,
KOLAR DISTRICT.

Dated, Kolar, the...7th October.....193 4.

FROM

2555/34

In all future correspondence please quote this
No. A.2.C.890/30-31
Encls. One duly

OFFICE OF THE DEPUTY COMMISSIONER,
KOLAR DISTRICT.

108

Dated, Kolar, the 7th November.....193 4.

FROM

T. G. RAMA IYER, ESQ., B.A.,
Deputy Commissioner,
Kolar District.

To R.Ranga Rao,Esq., B.A., B.L.,
Chief Secretary to the Government of Mysore,
Bangalore.

9 NOV. 1934

SIR,

In continuation of this office letter No.A.2.890/30-31 dated 31st October 1934, I have the honor to forward herewith copy of my letter addressed to the Public Prosecutor,Bangalore Division to-day separately and to request that you will be so good as to obtain very early orders of Government in regard to the filing of an appeal.

I have the honor to be,
Sir,
Your most obedient servant,
Deputy Commissioner,
Kolar District.

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Your most obedient servant,
Sd/-T.G.Rama Iyer,
Deputy Commissioner,
Kolar District.

A.R.2.
71154.

"COPY"

Deputy Commissioner,
Kolar District.

110

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 2335

Dated, Bangalore, 15th November 1934

16

From

The General Secretary to the Government of His Highness the Maharaja of Mysore.

To

The Deputy Commissioner,
Kolar District.

(O.S.No.21/31-32 on the file of the Sub Court, Bangalore)
Avani Mutt Vs. Nagaraja Rao).

Sir,

With reference to the correspondence ending with your letter No.3565 dated 7th November 1934 regarding the above case, I am directed to state that Government consider that this is not a fit case for appeal.

Necessary action may therefore be taken to satisfy the decree out of the funds at the credit of the Mutt in question.

I have the honor to be,
Sir,
Your most obedient servant,

Sd. S.Abdul Wajid.

General Secretary to Government.

Memo No. P 2336-37

Dated Bangalore, the 15th November 1934.

Copy of the above is forwarded with 16 compliments to the

(1) Muzrai Commissioner in Mysore,

(2) to the Public Prosecutor, Bangalore.

By order,

General Secretary to Government.

TSP

n.l.l.4

Appendix F.G—1]

SUBJECT .....

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Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the 193 .

Date of issue 16/11/34

Signed by M C Gen

List of enclosures .....

Copied by M Rm(L) 15/11/84

Examined by .....

Section Law

File No. 93-30

Serial No.

No. P2335

To

The DC Kolar

OS 21/31-32 on the file of the Sub. Ct. Bilar (Avani Mutt vs Nagaraja Rao)

Sir,

With reference to the Correspondence ending with your letter no. 2555 dt 7.11.34 re: the above Case. I am directed to state that for Consideration that this is not a fit Case for appeal as ~~no Chance of success are Too remote~~ necessary action may therefore kindly be taken to satisfy the

WD 01956—GPB—22,500—12-6-34

1/2

decree out of the funds at the Credit of the Matt in question.

A Copy of the decree received by the Rev. Bilare is herewith sent for information

I have the honour to be Sir, Your most obedient servant,

ISD 10/4

1074 for Genl Secy

Copies to: Rep 2336-37

1) The Rev. Bilare

2) Mag. Commr.

~~3) The S~~